

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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IN KOOK CHO, an individual,

Plaintiff,

Case No. 2:18-cv-01607-APG-CWH

## **ORDER REMANDING CASE TO STATE COURT**

METROPOLITAN GROUP PROPERTY  
AND CASUALTY INSURANCE  
COMPANY, a Rhode Island Corporation;  
DOES I through XV, and ROE Corporations I  
through X, inclusive,

## Defendants.

Defendant Metropolitan removed this case to federal court. It appears that the amount at issue in this case does not exceed this court's \$75,000 jurisdictional threshold. Therefore, I ordered Metropolitan to show cause why this case should not be remanded. Metropolitan filed a response. Nevertheless, there is insufficient evidence to convince me that the amount at issue in this case exceeds \$75,000. I therefore remand this case to state court.

Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Res.*, 873 F.2d 1221, 1225 (9th Cir. 1989). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (*citing Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). Thus, courts “strictly construe the removal statute against removal jurisdiction.” *Gaus*, 980 F.2d at 566. “The ‘strong presumption’ against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.” *Id.* Remand is required

1 if the court lacks subject matter jurisdiction. 28 U.S.C. §1447(c); *see also Aguon-Schulte v.*  
2 *Guam Election Comm'n*, 469 F.3d 1236, 1240 (9th Cir. 2006) ("remand may be ordered either  
3 for lack of subject matter jurisdiction or for 'any defect' in the removal procedure").

4 "[I]n cases where a plaintiff's state court complaint does not specify a particular amount  
5 of damages, the removing defendant bears the burden of establishing, by a preponderance of the  
6 evidence, that the amount in controversy exceeds [\$75,000]. Under this burden, the defendant  
7 must provide evidence establishing that it is 'more likely than not' that the amount in  
8 controversy exceeds that amount." *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th  
9 Cir. 1996). Broad allegations that the jurisdictional amount is met, "although attempting to  
10 recite some 'magical incantation,' neither overcome[ ] the 'strong presumption' against removal  
11 jurisdiction, nor satisf[y][the defendant]'s burden of setting forth, in the removal petition itself,  
12 the underlying facts supporting its assertion that the amount in controversy exceeds" \$75,000.  
13 *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 689 (9th Cir. 2006) (emphasis omitted)  
14 (quoting *Gaus*, 980 F.2d at 567); *see also Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d  
15 373, 377 (9th Cir. 1997) ("[R]emoval cannot be based simply upon conclusory allegations where  
16 the ad damnum is silent.") (internal quotations and citation omitted).

17 "Where a complaint is unclear as to the total amount of damages sought, but alleges only  
18 upper or lower limits or types of damages, a district court is free in its preponderance-of-the-  
19 evidence analysis to make estimations of the amount of damages that could be obtained  
20 consistent with the vague wording of the complaint." *Elliker v. Contractors Bonding & Ins. Co.*,  
21 3:12-CV-00438-RCJ-WGC, 2013 WL 757621, at \*1 (D. Nev. Feb. 27, 2013) (*citing Guglielmino*  
22 *v. McKee Foods Corp.*, 506 F.3d 696, 700–01 (9th Cir. 2007)). In making such analyses, district  
23 courts can make "reasonable deductions, reasonable inferences, or other reasonable

1 extrapolations from the pleadings to determine whether it is facially apparent that a case is  
2 removable,” and “may use their judicial experience and common sense in determining whether  
3 the case stated in a complaint meets federal jurisdictional requirements.” *Roe v. Michelin N. Am.,*  
4 *Inc.*, 613 F.3d 1058, 1061-1062 (11th Cir. 2010) (internal quotations omitted); *see also Ashcroft*  
5 *v. Iqbal*, 556 U.S. 662, 679 (2009) (“Determining whether a complaint states a plausible claim  
6 for relief . . . requires the reviewing court to draw on its judicial experience and common sense”).

7       Here, there is more than considerable doubt that the amount in controversy exceeds this  
8 court’s jurisdictional threshold. Plaintiff Cho “recovered \$25,000 from the tortfeasor[’s insurance]  
9 carrier and is alleging \$30,888 in past medical expenses, \$10,704 in future medical expenses,  
10 damages for insurance bad faith and punitive damages.” ECF No. 1 at 2:22-25. Because Cho  
11 alleges approximately \$41,000 in medical expenses and has already recovered \$25,000 towards  
12 that, he can seek only \$16,000 in medical expenses from Metropolitan, plus bad faith and punitive  
13 damages.

14       Metropolitan also relies on Cho’s initial settlement demand of the \$100,000 policy limit.  
15 ECF No 10-2 at 5. “A settlement letter is relevant evidence of the amount in controversy if it  
16 appears to reflect a reasonable estimate of the plaintiff’s claim.” *Cohn v. Petsmart, Inc.*, 281 F.3d  
17 837, 840 (9th Cir. 2002). Given the low amount of unpaid medical bills, that settlement demand  
18 is not a reasonable estimate of the value of Watson’s claims. It plainly was inflated for purposes  
19 of negotiating a resolution.

20       Moreover, Metropolitan has offered no facts supporting a claim to punitive damages, let  
21 alone in an amount approaching \$75,000. The naked allegations in the complaint that  
22 Metropolitan’s responses to the settlement demands were unreasonable is insufficient to  
23 demonstrate any entitlement to punitive damages. But even in the unlikely event that punitive

1 damages are awarded, it is doubtful they would be enough to bring the case over the \$75,000  
2 jurisdictional threshold, given the small amount of unpaid medical bills and Metropolitan's  
3 response to the demand.

4 Based on my judicial, legal, and practical experience and common sense, I find it highly  
5 unlikely that the amount in controversy exceeds \$75,000. In addition to awarding full recovery  
6 of her medical bills, a jury would have to award additional damages in excess of \$59,000. The  
7 underlying allegations do not suggest such an award. Thus, Metropolitan has not met its burden  
8 of establishing by a preponderance of the evidence that the amount in controversy exceeds  
9 \$75,000. *Roe*, 613 F.3d at 1061-1062; *Iqbal*, 556 U.S. at 679. Consequently, I remand this  
10 action to state court.

IT IS THEREFORE ORDERED that this case is remanded to the state court from which it was removed for all further proceedings. The Clerk of the Court is instructed to close this case.

14 Dated: September 21, 2018.

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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE